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| THE UNITED STATES OF AMERICA for the use and benefit of J. SCADUTO & SON, INC., Plaintiff, v. LIBERTY MUTUAL INSURANCE CO. And AGENCY CONSTRUCTION CORP., Defendants. | UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK Civil Action No. 08CV 01885 (GEL) "ECF Case" Declaration in Opposition to Plaintiff's Rule 12 Motion |
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Declaration of Evan Wiederkehr, Esq.

1. I am associated with the law firm of DelBello Donnellan Weingarten Wise and Wiederkehr, LLP, attorneys for defendant, Agency Construction Corp., in the above referenced matter and I am fully familiar with the facts and circumstances set forth herein.
2. Annexed hereto as Exhibit A is a true and complete copy of the May 10, 2008 First Amended Complaint of plaintiff, J. Scaduto & Son ("Scaduto").
3. Annexed hereto as Exhibit B is a true and complete copy of the June 12, 2008 Verified Answer and Counterclaims of defendant, Agency Construction Corp ("Agency").
4. Annexed hereto as Exhibit C is a true and complete copy of the June 23, 2008 Answer of defendant, Liberty Mutual Insurance Company ("Liberty").
5. Annexed hereto as Exhibit D is a true and complete copy of the Prime Contract by and between the United States Post Office and defendant, Agency Construction Corp., pursuant to which construction related work, labor and services were provided to the United States Post Office (the "Prime Contract").

6. Annexed hereto as Exhibit E is a true and complete copy of the September 28, 2006 Sub-Contractor Agreement by and between Agency and Scaduto pursuant to which certain roofing related work, labor and services were to be provided by Scaduto (the "Subcontract") as required by the Prime Contract.

7. Annexed hereto as Exhibit F collectively are true and complete copies of both a May 25, 2007 Incident Report of the Fire Department of New York and a June 18, 2007 Incident Report of the Fire Department of New York concerning the May 12, 2007 fire that occurred at the Mott Haven Post Office, 517 East 139th Street, Bronx, New York, that is the location at which the both the Prime Contract and Subcontract were performed. These documents are submitted to the Court to demonstrate Agency's good faith basis for its claim that Scaduto's tortious conduct and negligence caused, or contributed to, the May 12, 2007 fire.

8. Agency has not submitted to this Honorable Court the many dozens of invoices and copious documentation evidencing the more than SEVEN HUNDRED THOUSAND DOLLARS (\$700,000.00) costs attendant to replacement and rebuilding those parts of the Post Office damaged by the May 12, 2007 fire. In the event this Honorable Court elects to review this documentation, it may be provided promptly.

9. As set forth more particularly in the Memorandum of Law submitted on behalf of Agency in Opposition to Scaduto's Rule 12 motion, Agency's counterclaims are not subject to dismissal and in the event this Honorable Court grants Scaduto summary judgment, any such award should be limited to liability, only, and the issue of damages, if any, should be reserved for the time of

trial of this action after Agency has been afforded the right to conduct discovery.

Dated: White Plains, New York
August 1, 2008

DelBello Donnellan Weingarten
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By: /s/ Evan Wiederkehr
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